

Exhibit S

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LBREP LAKESIDE SC MASTER I, LLC,
7 SC MASTER HOLDINGS, LLC, AND
SC MASTER PARENT HOLDINGS, LLC
8

9 **UNITED STATES BANKRUPTCY COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA**

11 **SANTA ANA DIVISION**

12 In re

Case No. 8:08-bk-15588-ES

13 LBREP/L-SunCal Master I LLC, et al.,

Chapter 11 Case

14 Debtor.

(Jointly Administered with Case Nos.
8:08-bk-15637-ES; 8:08-bk-15639-ES; and
8:08-bk-15640-ES)

16 _____ Affects LBREP/L-SunCal Master I LLC
17 Only

**DECLARATION OF JUDGE MITCHEL
R. GOLDBERG, RETIRED, MEDIATOR**

18 _____ Affects LBREP/L- SunCal McAllister
Ranch, LLC Only

Judge: Hon. Erithe A. Smith
Date: November 29, 2012
Time: 2:00 pm
Place: Courtroom 5A
411 W. Fourth St.
Santa Ana, CA 92701

19 _____ Affects LBREP/L- SunCal McSweeny
Farms, LLC Only

21 _____ Affects LBREP/L- SunCal Summerwind
Ranch, LLC Only

22 X Affects All Debtors.

25 I, Mitchel R. Goldberg, hereby declare the following:

26 1. I acted as the mediator for the Parties in *Siegel v. LBREP Lakeside SC Master I, LLC*
27 *et al.*, in the United States District Court for the Central District of California, Southern Division,
28

1 Case No. CV 10-8191-GHK(VBKx). I have personal knowledge of the following information:

2 2. The subject Settlement Agreement was reached in substantially final form on or about
3 November 12, 2012. The compromise is the product of arm's-length negotiations between all
4 Parties represented by experienced counsel.

5 3. To reach this settlement, the Parties participated in six mediation sessions that took
6 place in March, April, June, September and October of 2012. I took an active role in each of these
7 sessions in order to facilitate the Parties' negotiations.

8 4. Prior to the first mediation session, the Parties exchanged briefs detailing their
9 positions on the legal and factual issues in this litigation, and provided to the undersigned extensive
10 documentation setting forth the legal and factual background of the case.

11 5. At the first mediation session in March 5, 2012, the Parties made numerous
12 presentations, and debated the strengths and weaknesses of the Trustee's claims. The data was
13 extensive so second and third sessions were set for April. The Parties submitted supplemental
14 briefing on disputed issues.

15 6. Given the complexities of the disputed issues, the LBREP Defendants and the Trustee
16 retained experts to further analyze and explain their perspectives.

17 7. The Parties made separate presentations at the second and third mediation sessions on
18 April 16 and 17, 2012. The LBREP/Lakeside/Suncal Defendants and the Trustee presented
19 conflicting analyses based on substantial fact development and expert consultation. The Parties
20 began to rigorously negotiate but could not reach common ground. Accordingly, the Parties
21 submitted a second set of supplemental briefing in preparation for a fourth mediation session in June.

22 8. At the fourth mediation session on June 16, 2012, the Parties continued to discuss the
23 relative strengths and weaknesses of their positions on these issues as well as a number of tangential
24 issues and narrowed in on a potential settlement amount, but were unable to reach an agreement.
25 The Parties submitted another round of supplemental briefing in preparation for a fifth and final
26 mediation session in which the Parties hoped to finalize the terms a settlement agreement.

27 9. At the fifth mediation session on September 12, 2012, the Parties negotiated over a
28 potential impediment to a final settlement payment amount. The Parties left the fifth session without

1 a finalized agreement, but with the framework for a final proposed term sheet which would be
2 finalized telephonically. A sixth session was held to negotiate distribution/participation issues
3 between defendant parties.

4 10. Throughout this process, I participated in numerous telephone conferences with each
5 Party addressing specific issues and arguments raised during the mediation sessions as well as
6 assisting the Parties resolve "minor hiccups" to the settlement concept.

7 11. In addition to the negotiation of a "lump sum" settlement between the Trustee on the
8 one hand and the Defendants on the other hand, I also assisted in the negotiations over the
9 contribution to be paid by the LBREP Defendants.

10 12. After these extensive negotiations and mediation proceedings over the course of
11 seven months, the Parties reached the subject Settlement Agreement, the most salient point of the
12 Settlement Agreement being a "lump sum" payment of sixteen million dollars (\$16,000,000.00) (the
13 "Settlement Payment") directly to the Trustee.

14 13. The Settlement Agreement represents a compromise of disputed issues of fact and
15 law, taking into consideration available defenses as well as the potential for liability and the
16 substantial amount of time and cost to fully litigate this matter through possible appeal and the time
17 delay value of concluding this case sooner than later.

18 14. In all my years' experience as a Judge and mediator I don't think I have been as
19 impressed by such a diligent group whose tireless good faith negotiations over an eight month period
20 made this settlement possible.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing
22 is true and correct. Executed in Santa Ana California, this 13 day of November, 2012.

25 DATED: November 13, 2012

Respectfully Submitted,

27 By


Honorable Mitchel R. Goldberg, Retired, *mediator*